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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JESSICA TISCHER, individually and
as Personal Representative For the
Spouse and Children of Jacob Tischer,
Decedent,

Plaintiff,

DEPOSITION

Case No.

3:19-cv-00166-jdp

vs.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation,

Defendant.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation,
Defendant/Third-Party Plaintiff,
vs.

PROFESSIONAL TRANSPORTATION, INC.,
Third-Party Defendant.

The deposition of HAROLD LOWE, taken under and
pursuant to the provisions of Chapter 804 of the
Wisconsin Statutes and the acts amendatory thereof
and supplementary thereto, before Stephanie J. Peil,
Notary Public in and for the State of Wisconsin, at
Q & A Court Reporters, Inc., 303 Main Street, Eau
Claire, Wisconsin, on the 2nd day of December, 2019,
commencing at approximately 2:00 p.m.

ORIGINAL TRANSCRIPT FILED AT THE

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ORIGINAL EXHIBITS WITH ORIGINAL TRANSCRIPT
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APPEARANCES:

Paul Banker, Esq., of Hunegs, LeNeave & Kvas,
1000 Twelve Oaks Center Drive, Suite 101, Wayzata,
Minnesota, 55391, appeared representing the
Plaintiff.

Thomas A.P. Hayden, Esq., of Union Pacific
Railroad Corporation, 101 North Wacker Drive, Room
1920, Chicago, Illinois, 60606, appeared
representing the Defendant and Third-Party
Plaintiff, Union Pacific Railroad Corporation.

Michael B. Cohen, Esq., of Quintairos, Prieto,
Wood & Boyer, P.A., 233 South Wacker Drive, 70th
Floor, Chicago, Illinois, 60606, appeared
representing the Third-Party Defendant, Professional
Transportation, Inc.

Also present: Jamie Lukehart Hobbs and Mark
Marvin.

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PROCEEDINGS

HAROLD LOWE,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BANKER:

Q. Could you please state your name for the
record.

A. Harold Lowe, L-O-W-E.

Q. Mr. Lowe, my name is Paul Banker, and I
represent the Mr. -- the Tischers in the claim
that they've made on behalf of Jacob Tischer
against UP Railroad. Have you ever had your
deposition taken before?

A. I had this statement taken.

Q. Okay. But how about a deposition with a court
reporter --

A. No.

Q. -- taking down -- let me just go over some of
the ground rules for today just so the process
is clear. The court reporter is taking down
everything we say, and so it's important when
we're talking and you're answering questions to
answer audibly as opposed to nodding your head
or saying huh-uh or um-hum because that won't
turn up in the transcript very well. Also,

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Q & A COURT REPORTERS, INC.

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<p>1 it's important that we not talk over each other 2 so that we have a clear record, so I'll try to 3 ask a question and then pause and let you have 4 a chance to respond. Also, if I ask a question 5 today and you don't understand it, just let me 6 know, and I'll do what I can to clarify it. 7 Does that sound acceptable? 8 A. Yep. 9 Q. Okay. What, if anything, did you do to prepare 10 for your deposition today? 11 A. Nothing. 12 Q. And by that I mean other than your attorney, 13 did you speak with anyone to get ready for your 14 deposition? 15 A. No. 16 MR. HAYDEN: Objection about his attorney, 17 but attorney for the railroad. 18 BY MR. BANKER: 19 Q. Did you have any -- are there any documents 20 that you reviewed? 21 A. Just this here just now (indicating). 22 Q. And you're pointing to -- 23 A. My statement. 24 Q. -- a statement? And what is that -- what is 25 your understanding of what -- about what that</p>	<p>1 Q. Did you attend -- do you have any post-high 2 school education? 3 A. Yes, so Chippewa Valley Technical College, so 4 technical college. 5 Q. Did you graduate from there with a degree? 6 A. No. 7 Q. How long did you attend there? 8 A. A semester and then -- well, I guess I went 9 back, so maybe two semesters. 10 Q. Do you have any other post-college formal 11 education? 12 A. No. 13 Q. Do you hold any professional licenses or 14 certifications? 15 A. CNA certificate. 16 Q. What is a CNA? 17 A. Certified nursing assistant. 18 Q. How long have you had that? 19 A. I haven't used it in a long time. It's not 20 really valid, so... 21 Q. When did you first get it? 22 A. Oh, I have no idea. Long time ago. 23 Q. Are you currently employed? 24 A. Yep. 25 Q. Who are you employed by?</p>
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<p>1 statement is? 2 A. This statement was taken right after the 3 incident happened, and that was, yeah, the 4 statement that I gave. 5 Q. Okay. Let me just shift gears for a moment and 6 get a little bit of background information 7 about you. What is your current address? 8 A. 612 Deyo, D-E-Y-O, Avenue, Eau Claire, 9 Wisconsin. 10 Q. And do you rent or own there? 11 A. Own. 12 Q. And do you live there with anyone? 13 A. Yeah, my wife and kids. 14 Q. Are your kids all under the age of 18? 15 A. Yep. 16 Q. How many do you have? 17 A. Two. 18 Q. Are you a high school graduate? 19 A. Yep. 20 Q. What year did you graduate? 21 A. Like '97. 22 Q. And where did you go to school? 23 A. Memorial. 24 Q. Is that here in Eau Claire? 25 A. Yep.</p>	<p>1 A. Union Pacific. 2 Q. How long have you worked for Union Pacific? 3 A. Five years. 4 Q. What is -- what is your current job with Union 5 Pacific? 6 A. Conductor. 7 Q. And how long have you been doing that job? 8 A. Off and on five years. 9 Q. Is there a particular geographic location that 10 you work out of? 11 A. Mostly Eau Claire, Altoona. 12 Q. And have you been a conductor ever since you 13 hired on with UP? 14 A. Yes. 15 Q. What kind of work do you do as a conductor? 16 And by that I mean do you hold a particular 17 job, or are you working an extra board, or what 18 do you do? 19 A. Currently I'm a switchman on the night shift in 20 the yard. 21 Q. And when you say "yard," is that the Altoona 22 yard? 23 A. Yes. 24 Q. Did you know Jacob Tischer? 25 A. Not really.</p>

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<p>1 Q. When you say "not really," what do you -- what</p> <p>2 do you mean?</p> <p>3 A. I had seen him a few times, like, in passing.</p> <p>4 Q. At work?</p> <p>5 A. Um-hum.</p> <p>6 Q. At the Altoona train yard?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ever have an opportunity to work</p> <p>9 together?</p> <p>10 A. No.</p> <p>11 Q. How about did you attend any training together?</p> <p>12 A. No.</p> <p>13 Q. I want to direct your attention to August 12th,</p> <p>14 19 -- or 2017. Were you working that day in</p> <p>15 the Altoona yard?</p> <p>16 A. Yes.</p> <p>17 Q. What were you doing that day?</p> <p>18 A. Footboard on Job 10.</p> <p>19 Q. What does -- and maybe if you could explain to</p> <p>20 me what does a -- what does footboard mean?</p> <p>21 A. Well, I make the switch lists for the tracks,</p> <p>22 and we divide and split up all the cars and</p> <p>23 build other trains.</p> <p>24 Q. So you're kind of -- working that job, you are</p> <p>25 developing the plan for the switching that day?</p>	<p>1 A. Neil Franchuk and Jake Tischer.</p> <p>2 Q. And did you understand them to be working</p> <p>3 together that day?</p> <p>4 A. Yes.</p> <p>5 Q. And they brought a train into -- back into the</p> <p>6 Altoona yard?</p> <p>7 A. Um-hum. Yes.</p> <p>8 Q. How did you know that they had brought a train</p> <p>9 into the Altoona yard that evening?</p> <p>10 A. Because I was footboard over the yard, so I</p> <p>11 knew that they were bringing it in.</p> <p>12 Q. Did someone tell you that? Did you see it?</p> <p>13 How did you -- did you have that information?</p> <p>14 A. They must have -- they must have called to come</p> <p>15 in, like radioed to come into the yard.</p> <p>16 Q. Were you listening to the radio as part of</p> <p>17 doing the footboard job?</p> <p>18 A. Yep.</p> <p>19 Q. What time of day was it that they brought the</p> <p>20 train into the Altoona yard?</p> <p>21 A. I don't really remember for sure. I think it</p> <p>22 was getting on to darker.</p> <p>23 Q. And we started -- we shifted from kind of</p> <p>24 talking about 2:30 to 7 because you were</p> <p>25 referencing when you first saw Mr. Tischer.</p>
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<p>1 A. Um-hum.</p> <p>2 Q. And what time did you start your shift that</p> <p>3 day?</p> <p>4 A. 2:30.</p> <p>5 Q. Was that the regular job that you were working</p> <p>6 at that time?</p> <p>7 A. I don't think I was usually footboard then. I</p> <p>8 was new to footboard. I don't think I was the</p> <p>9 regular footboard. I'd have to look. Maybe --</p> <p>10 yeah, I don't think I was the regular</p> <p>11 footboard, no.</p> <p>12 Q. Did you see -- and I want to -- I want to kind</p> <p>13 of take this in chronological fashion, so let's</p> <p>14 talk about -- right now let's focus on before 7</p> <p>15 o'clock in the evening. Between 2:30 in the</p> <p>16 afternoon when you started work and 7 o'clock</p> <p>17 in the evening, did you see Mr. Tischer?</p> <p>18 A. So when I punched in, like, no. Nope, I don't</p> <p>19 recall seeing him until he came in on that</p> <p>20 train.</p> <p>21 Q. When you say "he came in on that train," what</p> <p>22 are you describing there?</p> <p>23 A. I'm describing that they brought a train into</p> <p>24 the yard.</p> <p>25 Q. Who is the "they" you're referring to?</p>	<p>1 Between 2:30 and 7 I take it you were doing</p> <p>2 your footboard job?</p> <p>3 A. Yep, switching. Yep.</p> <p>4 Q. So let's pick up the chronology then at the</p> <p>5 point where Mr. Tischer and Mr. Franchuk are</p> <p>6 bringing the train back into the Altoona yard.</p> <p>7 What happened next?</p> <p>8 A. Well, they -- let's see. Well, I was in the</p> <p>9 shanty doing my, like, paperwork, and we must</p> <p>10 have -- must have, like, stopped to get out of</p> <p>11 their way or maybe I was just doing switch list</p> <p>12 or something in there. But I was in the shanty</p> <p>13 when they brought it in. And, yeah, so they --</p> <p>14 the train came in and parked there, and then,</p> <p>15 yeah, I was doing paperwork.</p> <p>16 Q. Okay. So the train comes in and parks. You're</p> <p>17 doing paperwork. What's the next thing that</p> <p>18 you recall?</p> <p>19 A. I recall, like, John Thomas, Neil Franchuk, and</p> <p>20 Mark Marvin and Jacob Tischer standing out the</p> <p>21 front door having a conversation.</p> <p>22 Q. Who is John Thomas?</p> <p>23 A. John Thomas was my switchman that day.</p> <p>24 Q. So he was working together with you on a crew?</p> <p>25 A. Yep.</p>

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<p>1 Q. Was there anyone else working with you on that 2 crew? 3 A. No. 4 Q. And you said Mark Marvin? 5 A. Yep. 6 Q. Who is Mark Marvin? 7 A. (Indicating.) 8 Q. Sure. Who is he? 9 A. The manager. 10 Q. Do you know what his title is? 11 A. MYO. 12 Q. And do you know what that stands for? 13 A. Manager of yard operations. 14 Q. And so you were describing Mr. Thomas, 15 Mr. Franchuk, Mr. Marvin, and Mr. Tischer 16 standing and having a conversation. Where were 17 they having that conversation? 18 A. Out in front of the shanty. 19 Q. And the shanty is in the Altoona yard? 20 A. Yes. 21 Q. How were you able to see them having a 22 conversation in front of the shanty? 23 A. The door was open. 24 Q. Were you able to hear any of their 25 conversation?</p>	<p>1 his brake stick, and then I started paying a 2 little bit of attention, and then the next 3 thing, yeah, Neil was talking about -- or, you 4 know, once I started paying attention, then 5 they -- at some point, like, Jake came into the 6 thing and sat down, and then it -- like, they 7 were saying that he wasn't feeling good or 8 didn't -- you know, and so -- yeah. I offered 9 him water, and he sat down on the bench, and 10 then they were talk -- trying to discuss, like, 11 about, I guess, if he was, you know, fit to go 12 out or -- Neil didn't really -- yeah, I don't 13 believe that Neil wanted, you know, to do any 14 more work with, you know... 15 Q. Let me just go back and ask a couple follow-up 16 questions. So you said you saw Jake Tischer's 17 brake stick fall? 18 A. Um-hum. 19 Q. Where was Jake Tischer when his brake stick 20 fell? 21 A. Standing out in front of the shanty. 22 Q. Where were you when you watched that brake 23 stick fall? 24 A. Sitting inside the shanty at the desk. 25 Q. Had you left the shanty at any point up to --</p>
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<p>1 A. No. 2 Q. Was there anyone else in the vicinity of the 3 shanty as they were having that conversation? 4 A. Nope. 5 Q. Do you know how long it was that they talked in 6 front of the shanty? 7 A. I could guess at maybe 15 minutes, if that 8 long. 9 Q. Do you have any sense of what it was that they 10 were talking about? 11 A. I believe -- I think that they were talking 12 about doing another pull from Norma. 13 Q. Why do you believe that? 14 A. It seems like that's what was going on. 15 Q. And is that because you overheard pieces of the 16 conversation? Or I'm just trying to understand 17 how you developed that impression. 18 MR. HAYDEN: Objection. He testified he 19 didn't hear anything. 20 A. Yeah. I don't know. That's what I -- I think 21 that's what was going on. I'm not really sure. 22 BY MR. BANKER: 23 Q. What happened next? 24 A. Well, I saw the brake stick fall, and that's 25 what kind of caught my attention. Jake dropped</p>	<p>1 from when you heard the train -- Mr. Franchuk 2 and Mr. Tischer's train come back into the 3 Norma yard until the brake stick fell? 4 A. Into the Altoona yard? 5 Q. Yeah. 6 A. Did I go outside the shanty? I don't really 7 recall if I had been in or out of the shanty. 8 I just really remember when they were -- when 9 they were talking and I was sitting on the 10 computer, I guess. That was, you know, when 11 the contact as I remember, I mean, as far as 12 that goes. 13 Q. Okay. You said when the brake stick fell 14 that's when you started paying attention? 15 A. Yeah. 16 Q. What was it about the brake stick falling that 17 drew your attention? 18 A. Like, because it fell over, so that caught my 19 attention. It's like why -- like, what was 20 going on there. 21 Q. Did the brake stick make a loud sound when it 22 fell, or how did it -- how did it grab your 23 attention? 24 A. Yeah, it must have. Must have made a bang when 25 it -- or some kind of noise when it, you</p>

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1 know...

2 Q. And you're watching this through the door of

3 the shanty?

4 A. Um-hum.

5 Q. So then Mr. Tischer came into the shanty and

6 sat down?

7 A. Yeah, yep.

8 Q. Was there -- who else was in the shanty other

9 than Mr. Tischer and you at that point?

10 A. I think John Thomas and potentially, like,

11 Neil. People were kind of starting to move

12 about then, you know, so people were moving in

13 and out of there.

14 Q. Had Mr. Marvin been into the shanty at any

15 point up to this point in the story?

16 A. Not that I recall.

17 Q. How big is the shanty, roughly?

18 A. 8-by-12.

19 Q. Okay. So not very big?

20 A. No.

21 Q. Are there chairs in the shanty?

22 A. Yeah.

23 Q. How many chairs are there?

24 A. There is a chair and a bench, so seating for,

25 like, three or four people.

1 Q. Is there air conditioning -- is there

2 electricity in the shanty?

3 A. Yes.

4 Q. How about air conditioning and heating?

5 A. Yes.

6 Q. So when Mr. Tischer comes into the shanty and

7 he sits down, where does he sit down?

8 A. He sat down on the bench.

9 Q. Where were you when he sits down on the bench?

10 A. Front of the desk in a chair, so he's

11 (indicating), over that way.

12 Q. Was that the closest that you had been to Mr.

13 Tischer at that point?

14 A. Yes.

15 Q. Had you talked to him before he sat down on the

16 bench in the shanty?

17 A. I don't think so.

18 Q. How did you -- you had mentioned previously

19 that you had an understanding that Mr. Tischer

20 wasn't feeling good. How did you develop that

21 impression?

22 A. I think when the people were moving back and

23 forth in and out of there, it was -- you know,

24 I don't know if it was Neil or John Thomas or

25 one of the guys, you know. Neil was -- was

1 making comments, you know, about -- about that,

2 about Jake and his condition or whatever that

3 he didn't, like, want -- you know, didn't think

4 he was acting himself or whatever.

5 Q. So I want to make sure I understand all of the

6 things that you directly heard. When the

7 conversation is first happening between

8 Mr. Thomas, Mr. Franchuk, Mr. Marvin, and Mr.

9 Tischer outside the shanty, my understanding is

10 you weren't able to hear that part of the

11 conversation.

12 A. Correct.

13 Q. So at what point did you start to hear

14 snippets -- did you hear any snippets of

15 conversation before the brake stick fell?

16 A. Not that I recall.

17 Q. Okay. And then after the brake stick fell,

18 what -- do you remember any particular

19 statements that anybody made?

20 MR. HAYDEN: Hearsay.

21 THE WITNESS: So what does that mean?

22 MR. BANKER: He's just making an objection

23 for the record, so you can --

24 THE WITNESS: Oh, okay.

25 MR. BANKER: -- go ahead and answer.

1 THE WITNESS: What was the question again?

2 BY MR. BANKER:

3 Q. Yes. So if we pick up at the point that Mr.

4 Tischer comes into the shanty --

5 A. Yep.

6 Q. -- do you recall any specific comments that

7 anyone made from that point on?

8 MR. HAYDEN: Same objection.

9 A. I mean, nothing -- I don't remember anything,

10 like, exactly specific, you know, but I

11 remember that Neil was saying that Jake wasn't

12 acting himself and that he didn't want to take

13 another run with him or, you know...

14 BY MR. BANKER:

15 Q. So from the point that Mr. Tischer comes in and

16 sits down on the bench in the shanty, did

17 Mr. Thomas say anything?

18 MR. HAYDEN: Hearsay.

19 A. I mean, there was talk going on, but I don't

20 really recall specifically what John Thomas

21 said or -- or what Neil said or, you know, I

22 don't remember exactly what they were saying.

23 BY MR. BANKER:

24 Q. Sure. So you've kind of described having the

25 impression that Mr. Tischer wasn't feeling

1 good.
2 A. Right.
3 Q. And that's about -- are you able to add any
4 specific details to that impression?
5 A. I mean, if I remember, he was like -- he seemed
6 to be sweating a lot, and so I offered him
7 water.
8 Q. When you say you offered him water, you mean
9 Mr. Tischer?
10 A. Yes.
11 Q. And did he accept the water?
12 A. He did.
13 Q. What happened next?
14 A. He was having trouble opening it, so I took the
15 cap off for him.
16 Q. Do you remember which hand he was trying to
17 open the bottle with?
18 A. Not specifically.
19 Q. Okay. After you opened the bottle of water,
20 did you give it back to him?
21 A. Yeah.
22 Q. And was he able to drink it?
23 A. Yes, he did.
24 Q. Up to this point -- so Mr. Tischer has come in
25 and sat down on the bench. Have you -- up to

1 the point that you handed him the bottle of
2 water back, is there any other conversation
3 that you recall between you and Mr. Tischer?
4 A. I mean, we didn't really -- yeah. No, we
5 really didn't have any -- I mean, if it -- if
6 we did talk, you know, it was -- I don't know.
7 I don't really remember anything. Like, there
8 was nothing major that was said or anything,
9 you know. He just sat down there, and I
10 offered him the water, and he drank it, and
11 other the guys were buzzing around and...
12 Q. And when you say "other guys were buzzing
13 around," are we still talking the same cast of
14 characters: Mr. Thomas, Mr. Franchuk, Mr.
15 Marvin, and Mr. Tischer?
16 A. Yeah. Neil Franchuk and John Thomas and, yeah,
17 Marvin was there moving around too, but Jake at
18 that point was not moving around. He was
19 sitting there.
20 Q. Was there -- was there anybody else, whoever
21 came to the shanty, during the time frame that
22 we're talking about, after the -- after the
23 train comes back to the Altoona yard with
24 Mr. Franchuk and Mr. Tischer's train?
25 A. Sooner or -- I mean, eventually I believe

1 the -- the PTI driver pulled up in a van.
2 Q. Do you know who that was?
3 A. I don't.
4 Q. Did the -- the PTI driver, did you ever see him
5 get out of his van?
6 A. Not that I recall.
7 Q. Okay. So I want to pick up from where you've
8 given the bottle of water to Mr. Tischer in the
9 shanty. What's the next thing that you recall
10 happening?
11 A. Well, what was it? The -- you know, then it
12 was decided upon there that there wasn't going
13 to be a second run taken, and -- and, yeah,
14 they weren't going to -- that was it, you know.
15 And then -- I guess then the whole thing
16 shifted to -- you know, to Jake and, you know,
17 the -- you know, and his -- you know, what was
18 going on with him.
19 Q. When you say it was decided that there was not
20 going to be a second run taken, how is it that
21 you know that?
22 A. I know that because I think Neil pretty much --
23 like, Neil wouldn't -- he -- he wasn't going to
24 go, so I think he pretty much flat out, like,
25 refused to go.

1 Q. Did you know Mr. Franchuk before this incident
2 with Mr. Tischer?
3 A. I mean, just in passing.
4 Q. Had you ever worked with him, with
5 Mr. Franchuk?
6 A. Probably, but I can't, like, recall if we, you
7 know, did or I don't remember if we have or
8 not.
9 Q. So when you say -- going back to this issue of
10 whether there's going to be a second run, when
11 you say it was decided that there wasn't going
12 to be a second run, is that based on what
13 Mr. Franchuk was expressing?
14 A. Yeah, between -- you know, that was the -- you
15 know, that was between him and Marvin and
16 the -- and I guess, you know, the -- that
17 was -- you know, that was -- I -- that was
18 decided between them guys.
19 Q. And when you say "that was it," what do you
20 mean by that was it?
21 A. The decision was made.
22 Q. Yeah.
23 A. That was it, the decision was made.
24 Q. Is that what you mean by it?
25 A. Yeah.

1 Q. So that there's not going to be a second run
2 taken, that's the end of that decision?
3 A. Yep.
4 Q. And then you said there was a shift then to
5 Jake and what was going on. Did you think
6 something was going on with Jake at that point?
7 A. I guess, like, yeah, after, like, you know,
8 seeing the brake stick fall over and -- and him
9 not being able to get the cap off the -- you
10 know, the water, like, yeah, it seemed like
11 that he was, you know, off.
12 Q. Did Mr. Tischer ever talk to you about how he
13 was feeling after he got back to the Altoona
14 yard?
15 A. No, I don't remember him saying anything
16 about -- you know, I don't remember him saying,
17 like, anything or, you know, he didn't -- he
18 didn't, like, ask for help or he didn't say
19 anything to that end.
20 Q. Did you ever ask Mr. Tischer any questions
21 yourself about how he was feeling?
22 A. I probably asked him if he was okay, or I'm
23 sure, you know, I was concerned when I gave him
24 the water, you know.
25 Q. Sure. Did you ever observe anyone else ask Mr.

1 Tischer any questions while he was sitting on
2 the bench in the shanty?
3 A. I would say I don't recall any exact questions,
4 but, like, Neil Franchuk and John Thomas and,
5 you know -- you know, people were trying to,
6 like, figure out -- you know, they were trying
7 to, like, figure out what was going on and the
8 sever -- you know, and the severity of what --
9 you know, was he -- you know, was he just sick,
10 was he -- you know, people were trying to kind
11 of start to, like, you know, wonder, like, you
12 know, how bad it was or, like, what was going
13 on with him.
14 Q. Sure. And what I'm trying to understand is are
15 they trying to figure that out by asking
16 questions of Mr. Tischer, or are they trying to
17 puzzle that out among themselves?
18 A. I guess they were talking, you know, or asking
19 him about it, but, yeah, they must -- you know,
20 yeah, they must have been asking him questions.
21 Q. Was he able to respond to their questions in
22 your mind?
23 A. He was still talking, but whether -- you know,
24 as far as -- I don't know that -- I don't know
25 that he, you know, was -- was able -- I don't

1 know that he was able to make that -- you know,
2 I don't know his -- what state he was in.
3 Like, I don't know if he could make that call,
4 like, you know.
5 Q. During the time that Mr. Tischer was sitting on
6 the bench in the shanty, had anyone offered a
7 theory about what was going on with Mr.
8 Tischer?
9 A. People were, you know, like trying to see if he
10 was just sick or if he was, you know -- or, you
11 know, they were trying to figure out, like,
12 the -- you know, the severity of where -- of
13 what was going on. So, I mean, you know, was
14 he just sick and he had to go home, or was he,
15 like, not feeling good or what, you know.
16 Q. So if sick is one possibility and not feeling
17 good is another possibility --
18 A. Right.
19 Q. -- was there a third possibility that was
20 offered?
21 A. I don't specifically remember anyone saying
22 anything exactly, you know. At some point I
23 think maybe it was people started wondering if
24 he wasn't, like, having some kind of diabetic
25 issue or something. I think I remember

1 something coming up to that end.
2 Q. Do you recall who it was that suggested it
3 might be a diabetic issue?
4 A. I don't.
5 Q. Other than what you've already spoken about,
6 was there any other possibility that was put
7 out there?
8 A. Nothing that I can recall specifically.
9 Q. So how long is Mr. Tischer sitting in the
10 shanty on the bench?
11 A. I would guess at, like, 15 minutes. Just
12 guessing.
13 Q. What happens next?
14 A. It was decided that -- that he would be going
15 back to the depot and -- and -- yeah.
16 Q. How do you know that it was decided that he
17 would go back to the depot?
18 A. Because I think somebody must have called for
19 PTI at that point, you know, to take him back.
20 Q. I take it it wasn't you?
21 A. Nope.
22 Q. Did you hear that call getting made?
23 A. I don't remember.
24 Q. Did you understand why Mr. Tischer was going
25 back to the depot?

1 A. Yeah.
2 Q. Why was that?
3 A. Because he was unable to -- like, to -- he
4 was -- they weren't taking a second run, and he
5 was sick or not feeling, you know, well.
6 Q. Had anyone expressed what it was that he was
7 going to do when he got back to the depot?
8 A. I think Neil Franchuk started talking about
9 calling people or calling his family members
10 because then they were thinking, you know, if
11 he could or couldn't drive himself or something
12 to that end, you know, so I think they started
13 talking about calling people.
14 Q. So at the point that Mr. Tischer is leaving the
15 shanty to go back to the depot, do you have an
16 understanding of whether he's going home or not
17 at that point?
18 A. He was going somewhere. He wasn't staying at
19 work, so I was kind of under the assumption, I
20 guess, that he was probably going home or
21 someone was going to be coming for him from
22 home.
23 Q. And is that an impression you developed from
24 kind of the conversation buzzing around you?
25 A. Yeah.

1 Q. Do you recall any of the specifics of that
2 conversation?
3 A. I think I remember -- I remember, you know,
4 Neil was the one, and he had contacts, so he
5 was, I think, trying to get ahold of somebody.
6 Q. You had mentioned that Mr. Franchuk had
7 expressed that day that someone needed to call
8 Mr. Tischer's family. Did you know of any of
9 Mr. Tischer's family?
10 A. No.
11 Q. Do you know whether Mr. Franchuk made any of
12 those calls to Mr. Tischer's family?
13 A. I don't know that he did or didn't for sure
14 there at the time. I don't remember.
15 Q. Do you know whether anyone else who was at the
16 shanty did?
17 A. Well, I know me and John Thomas don't have
18 out -- like, we didn't have phones, so I don't
19 recall, I guess. I don't remember -- I don't
20 remember anyone, like, talking on a phone
21 there.
22 Q. Okay. How was it that -- so Mr. Tischer leaves
23 the shanty area at some point?
24 A. Um-hum.
25 Q. How does he leave the shanty area?

1 A. In the PTI van.
2 Q. How does he get from the bench in the shanty to
3 the PTI van?
4 A. I think -- I think maybe Neil and John Thomas
5 might have helped him along. He was still --
6 he was still mobile and moving on his own
7 power, though, too.
8 Q. So they get him into the PTI van?
9 A. Yep.
10 Q. Did you help with that process at all?
11 A. No.
12 Q. What happens next?
13 A. Me and John Thomas went back to work switching,
14 as I recall. I believe -- I think John Thomas
15 went and made sure that the train was secure
16 because Neil was wondering if -- if Jake tied
17 it down or not, you know. So I think -- yeah,
18 I remember John Thomas went and checked their
19 train over, and then they were -- they were
20 gone.
21 Q. When you say "they were gone," who is -- who is
22 the "they"?
23 A. I think -- I don't -- I think Neil and -- Neil
24 and Jake Tischer then. I know Jake was gone
25 for sure in the van, and then I just remember,

1 like, we just went back -- you know, we went
2 back to work.
3 Q. So the last time you saw Mr. Tischer is as he's
4 getting into the PTI van to leave?
5 A. That's correct.
6 Q. And did anyone else get into the PTI vehicle
7 with Mr. Tischer?
8 A. Not that I recall.
9 Q. Did you see Mr. Tischer at any point after
10 that, after he left the shanty area?
11 A. No.
12 Q. Do you know where -- so you and Mr. Thomas went
13 back to work. Do you know where Mr. Franchuk
14 went next?
15 A. I guess I'm not a hundred percent sure where he
16 went.
17 Q. Do you know where Mr. Marvin was at that point?
18 A. He drove away in the manager vehicle.
19 Q. Do you know where he was going?
20 A. I do not.
21 Q. Did you have any more involvement with this
22 Tischer incident that day?
23 A. I guess by looking back at my statement the
24 only thing is somewhere later I called to
25 inquire about what -- you know, a follow-up.

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<p>1 Q. Was that a call you made over the radio?</p> <p>2 A. Yes.</p> <p>3 Q. And who were you -- who were you calling for</p> <p>4 over the radio?</p> <p>5 A. Mark Marvin.</p> <p>6 Q. And what -- what did you want to know?</p> <p>7 A. I was just checking on -- you know, checking in</p> <p>8 on the situation.</p> <p>9 Q. And did you get a response back?</p> <p>10 A. I think that's the time when -- I think that's</p> <p>11 the first -- I think that's when I heard that</p> <p>12 he was sent -- or something about a stroke.</p> <p>13 Q. Do you know when that conversation between you</p> <p>14 and Marvin over the radio took place?</p> <p>15 A. No.</p> <p>16 Q. Did you -- well, let me -- let me back up a</p> <p>17 step. Was there -- had there -- up to this</p> <p>18 point, had there been any discussion about</p> <p>19 calling 911 or emergency services?</p> <p>20 A. I don't know. There might have been some talk</p> <p>21 about it, but I don't really -- I don't really</p> <p>22 remember that being -- you know, no one was</p> <p>23 really pushing for it yet at that point, you</p> <p>24 know, because we were like -- like, it was --</p> <p>25 no one really knew how bad he was. Like I</p>	<p>1 Q. Were you aware that they had been called?</p> <p>2 A. I don't believe so. Not from out in the yard,</p> <p>3 like, I didn't hear anything or no one said</p> <p>4 anything over the radio to that effect, so we</p> <p>5 didn't know. I didn't know that.</p> <p>6 Q. Did you learn about that at some point later?</p> <p>7 A. I think so. I mean, you know, the hearsay</p> <p>8 around the depot or, you know, people talking,</p> <p>9 like, you know. Then I heard tidbits or, you</p> <p>10 know, heard -- I heard things, but I don't</p> <p>11 really know who saw what or what really -- you</p> <p>12 know, I don't really know what really happened</p> <p>13 after that.</p> <p>14 Q. Okay. I want to shift gears a little bit and</p> <p>15 ask some follow-up questions. From the point</p> <p>16 that Mr. Franchuk and Tischer's train came back</p> <p>17 in the Altoona yard until the point that Mr.</p> <p>18 Tischer got into the PTI vehicle -- so that's</p> <p>19 the time frame I want to focus on.</p> <p>20 A. Yep, yep.</p> <p>21 Q. -- did you make any notes during that time</p> <p>22 frame?</p> <p>23 A. No.</p> <p>24 Q. Did you take any pictures during that time</p> <p>25 frame?</p>
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<p>1 said, if it was just sick or if it was -- you</p> <p>2 know, you don't want to call 911 if someone is</p> <p>3 just sick, so there -- you know, I don't really</p> <p>4 remember anyone saying that, like, or asking</p> <p>5 about it, really. I mean, it wasn't a big</p> <p>6 thing that stuck out, no.</p> <p>7 Q. Was there anything more that was said between</p> <p>8 you and Mr. Marvin over the radio other than</p> <p>9 you calling to check and him saying that maybe</p> <p>10 he was having a stroke?</p> <p>11 A. I don't believe so.</p> <p>12 Q. Did you have any further involvement after that</p> <p>13 radio call?</p> <p>14 A. No. He was -- he was gone by the time that we</p> <p>15 got in from our shift, so...</p> <p>16 Q. So you worked the rest of your shift that</p> <p>17 night?</p> <p>18 A. Yep.</p> <p>19 Q. Did you ever go from the shanty area over to</p> <p>20 the depot before your shift ended?</p> <p>21 A. Not that I recall. He was -- I never saw him</p> <p>22 again after that point.</p> <p>23 Q. Did you ever see or hear any ambulance or first</p> <p>24 response vehicles?</p> <p>25 A. No, I did not.</p>	<p>1 A. No. I didn't have anything to do anything like</p> <p>2 that with, really.</p> <p>3 Q. Have we talked about all the people who were in</p> <p>4 the vicinity of the shanty during that time</p> <p>5 frame?</p> <p>6 A. Yeah. There was four of us there. That was it</p> <p>7 until the PTI person pulled up.</p> <p>8 Q. Was there anyone else working in the yard that</p> <p>9 evening?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Did you ever learn anything more about how Mr.</p> <p>12 Tischer had been acting that day while he was</p> <p>13 working?</p> <p>14 A. I think -- you know, I believe --</p> <p>15 MR. HAYDEN: Objection. Hearsay. Go</p> <p>16 ahead.</p> <p>17 A. I believe, you know, Neil said that he thought</p> <p>18 he was acting off or not himself, you know. I</p> <p>19 think that -- I don't know at what point or</p> <p>20 whatever, but Neil was -- said that, you know,</p> <p>21 he didn't think that he was right or whatever.</p> <p>22 BY MR. BANKER:</p> <p>23 Q. Sure. And I appreciate that idea. Was it --</p> <p>24 did he ever communicate any more specifics to</p> <p>25 you about how he was off or examples of how he</p>

9 (Pages 33 to 36)

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<p>1 was off or not right?</p> <p>2 MR. HAYDEN: Same objection.</p> <p>3 A. Not that I recall.</p> <p>4 BY MR. BANKER:</p> <p>5 Q. Okay. Did Mr. Tischer ever communicate any of</p> <p>6 those specifics to you?</p> <p>7 A. No.</p> <p>8 Q. During the time frame that Mr. Tischer was in</p> <p>9 the vicinity of the shanty with you, did -- and</p> <p>10 you've described some of the ways that he was</p> <p>11 behaving. Did you observe anything else that</p> <p>12 stuck out in your mind as strange or unusual?</p> <p>13 A. The dropping of the brake stick, the not being</p> <p>14 able to open the water.</p> <p>15 Q. How about how he was speaking?</p> <p>16 A. It seemed all right. I mean, I think he was --</p> <p>17 I think he was sweating pretty profusely or</p> <p>18 seemed to be sweating a lot.</p> <p>19 Q. Was it a hot day so that it would be normal to</p> <p>20 sweat that much, or was it unusual?</p> <p>21 A. It seemed like more. He was sweating more than</p> <p>22 me and more than some of the other guys. And I</p> <p>23 guess that was kind of maybe why I offered him</p> <p>24 the water because I -- you know, heat</p> <p>25 exhaustion, you know.</p>	<p>1 Q. Did you ever see Mr. Tischer use the portable</p> <p>2 bathroom?</p> <p>3 A. I believe he did.</p> <p>4 Q. Was that before or after what you've described</p> <p>5 about him dropping his brake stick?</p> <p>6 A. It was before he came into the shanty, so -- it</p> <p>7 was before he came into the shanty.</p> <p>8 Q. The bathroom was?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay.</p> <p>11 A. So it was sometime when they were out there</p> <p>12 having that conversation. Whether it was</p> <p>13 before or after the brake stick, I'm not sure,</p> <p>14 but I do remember a bang from the door, that he</p> <p>15 went in there.</p> <p>16 Q. Okay. Did you hear Mr. Marvin saying that he</p> <p>17 wanted the crew to take another run to Norma?</p> <p>18 A. I didn't really hear that conversation, so I'm</p> <p>19 not really sure. But I know that there was,</p> <p>20 like, another -- I believe that there was</p> <p>21 another run that was planned or there was --</p> <p>22 yeah, I know that they were supposed to go up</p> <p>23 there again.</p> <p>24 Q. Did you ever see Mr. Marvin make a phone call</p> <p>25 while he was in the vicinity of the shanty?</p>
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<p>1 Q. Sure. How about did you see him having any</p> <p>2 trouble walking?</p> <p>3 A. I don't know. I'm not a hundred percent sure.</p> <p>4 Did he stumble when he came into the shanty?</p> <p>5 Did I say that in here? It's been a long time.</p> <p>6 I'm not really sure exactly. He was mobile,</p> <p>7 but he might have stumbled here or there. I</p> <p>8 can't say a hundred percent for sure. The</p> <p>9 time -- a lot of time has passed here.</p> <p>10 Q. Did you notice at any point whether his face</p> <p>11 was drooping at all?</p> <p>12 A. I never seen that. I didn't notice that.</p> <p>13 Q. Do you know how long it was after Mr. Franchuk</p> <p>14 arrived at the shanty until Mr. Marvin arrived</p> <p>15 at the shanty?</p> <p>16 A. I don't know. I could only guess. I don't --</p> <p>17 I have no idea.</p> <p>18 Q. Okay. And I guess by that I'm asking do you</p> <p>19 have a recollection that they arrived together</p> <p>20 or separately?</p> <p>21 A. He was out there shortly thereafter, I believe.</p> <p>22 It was relatively quick, yeah.</p> <p>23 Q. Was there a portable bathroom in the vicinity</p> <p>24 of the shanty?</p> <p>25 A. There was.</p>	<p>1 A. I don't remember.</p> <p>2 Q. Did you ever -- and I think I -- maybe you've</p> <p>3 talked about this. But did you ever</p> <p>4 communicate with any of the emergency personnel</p> <p>5 who responded to the Tischer incident?</p> <p>6 A. No.</p> <p>7 Q. Have we talked about all of your involvement</p> <p>8 with the Tischer incident on that day?</p> <p>9 A. I do believe so.</p> <p>10 Q. Did you have any further involvement with it</p> <p>11 after that day?</p> <p>12 A. I gave the statement, and that was -- that's</p> <p>13 about it.</p> <p>14 Q. And the statement was given on September 29th,</p> <p>15 2017?</p> <p>16 A. Yep.</p> <p>17 Q. And who did you give that statement to?</p> <p>18 A. Jamie Lukehart.</p> <p>19 Q. And who is she?</p> <p>20 A. She is a Union Pacific worker.</p> <p>21 Q. Do you know what she does?</p> <p>22 A. Senior risk management specialist.</p> <p>23 Q. But beyond that, you don't know what she does?</p> <p>24 A. Not really, no.</p> <p>25 Q. Was Mr. Swentik working that night?</p>

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<p>1 A. I don't believe so.</p> <p>2 Q. Do you know who Mike Swentik is?</p> <p>3 A. Yes.</p> <p>4 Q. And that's S-W-E-N-T-I-K?</p> <p>5 A. I believe so.</p> <p>6 Q. Was there any talk about calling Mr. Swentik to</p> <p>7 get his input into this situation?</p> <p>8 A. I don't recall.</p> <p>9 Q. Who is Mr. Swentik?</p> <p>10 A. He's the big boss over the yard, over Mark</p> <p>11 Marvin, over all of us.</p> <p>12 Q. Do you know who Tim Dold, D-O-L-D, is?</p> <p>13 A. Yeah.</p> <p>14 Q. Who is he?</p> <p>15 A. He's another conductor.</p> <p>16 Q. Was he working that night?</p> <p>17 A. I don't recall. I don't remember.</p> <p>18 Q. Have you ever -- well, let me start more</p> <p>19 broadly. Have you received training from UP</p> <p>20 about how to do your job?</p> <p>21 A. About how to do my job?</p> <p>22 Q. Yes.</p> <p>23 A. Yeah.</p> <p>24 Q. I take it when you first started working as a</p> <p>25 conductor, you had to learn from UP how they</p>	<p>1 not being able to use, you know, one side or</p> <p>2 whatever, and then that side droops.</p> <p>3 Q. When you say you've seen magnets, what do you</p> <p>4 mean?</p> <p>5 A. I've seen, like, things around about stroke</p> <p>6 awareness.</p> <p>7 Q. At UP?</p> <p>8 A. Yeah, I think there was stuff there.</p> <p>9 Q. What kind of things are there to develop stroke</p> <p>10 awareness at UP?</p> <p>11 A. I think there was, like, magnets around or -- I</p> <p>12 think that's -- yeah, used to be. I thought I</p> <p>13 seen something there.</p> <p>14 Q. What do the magnets say, or what do they</p> <p>15 communicate?</p> <p>16 A. Symptoms of a stroke, maybe.</p> <p>17 Q. Like a fridge magnet?</p> <p>18 A. Yeah, yeah. Yep.</p> <p>19 Q. That would list certain symptoms?</p> <p>20 A. I believe so, yeah.</p> <p>21 Q. Do you know how many symptoms the magnet</p> <p>22 listed?</p> <p>23 A. I don't.</p> <p>24 Q. Are they just in a basket and anyone who wants</p> <p>25 one can take one, or how --</p>
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<p>1 wanted you to work as a conductor?</p> <p>2 A. Um-hum.</p> <p>3 Q. Tell me what that was, essentially.</p> <p>4 A. Lots of books. It was a class that we went to</p> <p>5 and learned about -- all about train stuff.</p> <p>6 Q. And then have you periodically had training</p> <p>7 from UP since then?</p> <p>8 A. Yes.</p> <p>9 Q. In the course of receiving training from UP,</p> <p>10 have you ever had any first-aid training?</p> <p>11 A. Not that I recall.</p> <p>12 Q. And more specifically, have you ever had any</p> <p>13 stroke awareness training?</p> <p>14 A. I'm not sure. Maybe since then. I don't</p> <p>15 really -- I don't know.</p> <p>16 Q. Setting aside the formal -- any training that</p> <p>17 you've received from UP, did you have an</p> <p>18 awareness before Mr. Tischer's incident about</p> <p>19 what -- recognizing the signs and symptoms of a</p> <p>20 stroke?</p> <p>21 A. I know, like, the droopy face, you know, and --</p> <p>22 what is it? Some of the -- you know, some of</p> <p>23 the symptoms, which I don't know if I picked</p> <p>24 that up now or since then because I've seen</p> <p>25 magnets and other things, you know. But I know</p>	<p>1 A. No. I just seen one somewhere around there.</p> <p>2 Q. Okay. Did you -- you had mentioned earlier</p> <p>3 that you had a certified nursing assistant --</p> <p>4 A. Yeah, that's correct.</p> <p>5 Q. Is that a license or a --</p> <p>6 A. Certificate, yeah.</p> <p>7 Q. And so as part of that training, had you had</p> <p>8 any training about stroke awareness?</p> <p>9 A. I don't recall. Most of that stuff was, like,</p> <p>10 after-the-fact stuff as far as, like, dealing</p> <p>11 with them in -- dealing with elderly or other</p> <p>12 things, like, in a nursing home situation.</p> <p>13 Q. So when you say you had some awareness before</p> <p>14 Mr. Tischer's incident kind of about symptoms</p> <p>15 of a stroke, is that just sort of coming from</p> <p>16 your general knowledge?</p> <p>17 A. Yeah. My grandma had one.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah.</p> <p>20 (Exhibit 33 marked for identification.)</p> <p>21 BY MR. BANKER:</p> <p>22 Q. Showing you what's been marked for</p> <p>23 identification as Exhibit 33. Do you recognize</p> <p>24 what this document is?</p> <p>25 A. It's a map of the Altoona yard.</p>

11 (Pages 41 to 44)

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<p>1 Q. And I -- and I understand it to be more of a 2 schematic than -- than a to-scale drawing. Is 3 that your understanding as well? 4 A. Yeah. 5 Q. Are you able to use this Exhibit 33 track chart 6 to orient me to where the shanty is relative to 7 the depot? Do you know where the depot is 8 listed on the track chart? 9 A. Let's see. Yep, I do. 10 Q. Are you able to use that to orient you to where 11 the shanty is? 12 A. Yep. 13 Q. If you could just put a mark, maybe an X with 14 your initials, next to it to indicate where the 15 shanty is, we'll call that -- why don't we make 16 a mark, No. 1. 17 A. Okay. Oh, I put an X there. Do you want me to 18 change it to -- 19 Q. We'll use the X then. 20 A. Okay. We'll go with that. 21 Q. So is everything that you've described in terms 22 of the conversation from when Mr. Tischer comes 23 back into the Altoona yard until he leaves in 24 the PTI vehicle, that all takes place at the 25 shanty location that you've marked on Exhibit</p>	<p>1 A. I don't know what -- I don't know what that is, 2 but... 3 Q. Okay. Do you recall receiving any training 4 regarding UP's medical rules? 5 A. Not right offhand. Yeah, that is the only 6 thing I saw that said medical. 5/30, The 7 Science of Fatigue, that sounds like a... 8 Q. What year are you referring to there? 9 A. Oh, that's -- that's -- oh, that's back in '14, 10 5/30 of '14, The Science of Fatigue, and I'm 11 going to say it's probably alcohol. 12 Q. Okay. Let's set that aside. Is that your copy 13 of your statement in front of you? 14 A. Yes, it is. 15 Q. Is that something you want to take with you? 16 A. Sure. 17 (Exhibit 35 marked for identification.) 18 BY MR. BANKER: 19 Q. So showing you what's been marked as Exhibit 20 35, and we've made a couple of references to it 21 today. Exhibit 35 is a copy of your recorded 22 statement given to UP after the Tischer 23 incident? 24 A. Yep. 25 Q. Have you had a chance to review that?</p>
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<p>1 33? 2 A. That's correct. 3 (Exhibit 34 marked for identification.) 4 BY MR. BANKER: 5 Q. Showing you what's been marked for 6 identification as Exhibit 34. And I'll 7 represent to you that I understand this to be a 8 report of your training from UP. Do you 9 recognize it as being that? 10 A. Training history, yep. Yes, it is. 11 Q. Training history. And looking at the training 12 history, is there anything in there that you 13 would point to as being either first-aid 14 training or stroke training? And I'll 15 represent to you that I've been through it and 16 have not found any such thing, but wondering if 17 you can -- you're able to confirm that. 18 A. It's mostly related to -- it's rules about 19 work. This is -- is this mine? 20 Q. I believe this is your training history. 21 A. I don't know. What's this Medical Rules 22 Training, 2/17 -- 2/7 of '17 Medical Rules? I 23 don't know. I don't know what it is, but I -- 24 Medical Rules Training. 25 Q. Okay.</p>	<p>1 A. I read it over today. 2 Q. Is there anything in there that you don't 3 believe is accurate or that doesn't accurately 4 reflect your memory? 5 A. No, I -- that was -- this was taken, you know, 6 right after it or within, what, a month's time. 7 So this was probably -- it was fresher in my 8 mind probably then than it is now for sure. 9 Q. Okay. 10 A. That's all. I mean -- and I told what I know 11 and told the truth then too. 12 Q. But in reading through it, you didn't take any 13 issue with anything that was in there? 14 A. No. 15 Q. Did you -- looking at it from the other 16 perspective, do you think there was anything 17 that wasn't included or wasn't asked that bears 18 on this incident? 19 A. I don't know what could have been asked or what 20 was or wasn't, you know. I don't -- 21 Q. Sure. That's kind of a bad question. 22 A. Yeah. I don't know. 23 Q. Did you ever learn what had become of Mr. 24 Tischer? 25 A. Yeah, just, you know, from rumors around the</p>

<p style="text-align: right;">Page 49</p> <p>1 depot or whatever or people contacting and 2 whatnot. 3 Q. What was your understanding? 4 A. That he suffered a stroke that day and that 5 eventually he passed away, that they tried to 6 do, you know, surgeries on him. And, you know, 7 I think they cut into his head and tried to 8 relieve pressure, and I don't believe he ever 9 talked after that point. It was just rumors 10 I've heard around the depot. 11 Q. Sure. 12 A. Eventually, you know, there was -- he passed 13 away, and there was a collection that went 14 around. 15 Q. Do you recall anyone who specifically 16 communicated any of that understanding to you? 17 A. No. It was just -- like, just, you know, stuff 18 from around the depot. I don't remember who 19 said what about it. 20 Q. Sure. I want to come back to -- you made a 21 point earlier. You said you didn't have a cell 22 phone -- neither you nor Mr. Thomas had a cell 23 phone with you while you were working. 24 A. That's correct. 25 Q. Is that a company policy?</p>	<p style="text-align: right;">Page 51</p> <p>1 after the Tischer incident? 2 A. Yeah. 3 Q. How did you learn about that after the Tischer 4 incident? 5 A. I don't really know. Just because I became 6 more familiar with the stuff and maybe someone 7 said, you know. I -- I don't know. Maybe it 8 was because of this, you know. 9 Q. If you had wanted to call 911 when Mr. Tischer 10 was at the depot, how would you have gone about 11 that -- 12 A. At the shanty? 13 Q. -- given your understanding at the time? 14 A. When he was at the shanty? 15 Q. When he was at the shanty. Did I say depot 16 again? 17 A. Yeah, you did. 18 Q. I didn't mean to. Shanty. 19 A. Marvin was -- you know, Marvin was there, and 20 management can have cell phones, so I guess, 21 you know, I would -- you know, at that time, I 22 guess, I probably would have called to the 23 management, you know, or would have called to 24 the office. 25 Q. And how -- if you don't have a cell phone, how</p>
<p style="text-align: right;">Page 50</p> <p>1 A. It is. 2 Q. Did you have the ability during the time that 3 Mr. Tischer was at the depot to contact 911? 4 A. When he was at the depot? 5 Q. I'm sorry. When he was at the shanty. 6 A. Not that I was aware of at the time, you know. 7 Q. But if you didn't -- if you didn't have a cell 8 phone and you needed medical assistance or 9 somebody you were working with, would you have 10 been able to do it, or what would you -- how 11 would you have handled that? 12 A. I guess, you know, now -- like, now that I've 13 been there longer and know other stuff about 14 it, there's a -- our -- you can tip the box, 15 and it will broadcast a man down, and that will 16 get -- that'll flag on the radio to, like, the 17 dispatch in Omaha. 18 Q. When you say "tip the box," are you talking 19 like a remote control box? 20 A. Yep, yep. If you tip that, it will alarm out, 21 and you'll get someone on the radio. And then 22 also on our handhelds I believe I've learned 23 that if you press star 911, I think that it 24 calls 911. 25 Q. And is that an understanding that you developed</p>	<p style="text-align: right;">Page 52</p> <p>1 do you call to management or the office from 2 the shanty? 3 A. Our handheld walkie-talkies. 4 Q. Let me just take a moment and review my notes. 5 Just one other topic I want to explore. Do you 6 know who Jessica Carson is? 7 A. She's our nurse. 8 Q. When you say she's your nurse, in what sense is 9 she your nurse? 10 A. She's the Union Pacific nurse lady who comes 11 around with the flu shots and blood pressure 12 and other things like that. 13 Q. How often does she come around and do that sort 14 of thing? 15 A. I don't know. 16 Q. Have you ever spoken with Ms. Jessica Carson 17 about anything relating to the Tischer 18 incident? 19 A. I remember seeing an email that came out about 20 it, but I don't remember talking with her about 21 this specific incident. 22 Q. What's your recollection of the email that came 23 out? 24 A. Well, there's safety -- there's some kind of 25 safety thing that comes out after an incident</p>

13 (Pages 49 to 52)

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1 has taken place, and I remember seeing
 2 something about -- you know, a report about --
 3 or something. I remember seeing something a
 4 stroke -- something about stroke on an email.
 5 Q. From Jessica Carson?
 6 A. I think it was. I don't really know for sure.
 7 Q. And do you remember anything more specifically
 8 about what it said?
 9 A. I don't, really. Maybe that's where that
 10 acronym -- maybe there's an acronym in there
 11 about something about a stroke. Like, I don't
 12 really recall what that email said.
 13 Q. Are you familiar with a -- with a stroke
 14 acronym that UP uses?
 15 A. I know that there is one. I saw it on that
 16 magnet.
 17 Q. Is the -- is the acronym FAST, F-A-S-T, at all
 18 familiar to you?
 19 A. Isn't that the fire extinguisher one?
 20 Q. I couldn't tell you. I guess I'm asking what
 21 you -- what you recall.
 22 A. There's so many -- like, I don't know. I think
 23 there is one. I know that there is one with
 24 that, but I don't know what it stands for at
 25 the moment.

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1 MR. BANKER: Okay. Thank you. I don't
 2 have any further questions.
 3 BY MR. COHEN:
 4 Q. Good afternoon, Mr. Lowe. We met earlier today
 5 before your deposition, but I'll introduce
 6 myself again. My name is Mike Cohen, and I
 7 represent PTI in this lawsuit. Do you know who
 8 was driving the PTI van on August 12th, 2017?
 9 A. I do not.
 10 Q. Are you familiar with the name Charles or Chaz
 11 Lux?
 12 A. Chaz. Chaz kind of rings a bell. Chaz. I
 13 don't believe he works there anymore.
 14 Q. How were you possibly familiar with that name?
 15 A. Probably from getting rides from him.
 16 Q. Had you gotten rides from the driver of the PTI
 17 van that was driving the PTI van on
 18 August 12th, 2017?
 19 A. I probably did.
 20 Q. Okay. You mentioned that at some point the PTI
 21 van pulled up to the shanty on that day; is
 22 that correct?
 23 A. Yep.
 24 Q. And do you know approximately how long the PTI
 25 van was parked near the shanty?

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1 A. I don't.
 2 Q. And it was your testimony, correct, that the
 3 PTI van later drove away with Mr. Tischer;
 4 right?
 5 A. Yep.
 6 Q. Do you know where the PTI van took Mr. Tischer?
 7 A. I assumed back to the depot.
 8 Q. Do you know how the -- how the driver of the
 9 van knew where to take Mr. Tischer?
 10 A. As part of their training.
 11 Q. Did you ever hear anybody tell the driver of
 12 the PTI van where to take Mr. Tischer?
 13 A. Not that I recall.
 14 Q. Did you ever hear anybody say anything to the
 15 PTI driver, or did you hear the PTI driver say
 16 anything to anybody that day?
 17 A. About this incident, like, there?
 18 Q. Yes.
 19 A. No, I don't know.
 20 Q. Fair enough.
 21 A. Yeah.
 22 Q. I want to talk to you a little bit about your
 23 training. Other than the Medical Rules
 24 Training you may have received, did -- did
 25 Union Pacific ever offer any first-aid training

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1 to you that you recall?
 2 A. Not that I recall.
 3 MR. COHEN: Okay. That's all the
 4 questions I have. Sorry. One last question.
 5 BY MR. COHEN:
 6 Q. You mentioned that a collection went around
 7 after Mr. Tischer passed away; is that correct?
 8 A. That's correct.
 9 Q. Who put that collection around?
 10 A. One of our co-workers. I don't know.
 11 Q. Do you recall approximately when that was?
 12 A. Maybe a month and a half later, maybe.
 13 Q. Sure. And what was your understanding of the
 14 purpose of that collection?
 15 A. To help with his wife and kids.
 16 Q. Sure. Did you donate to the Tischer family?
 17 A. I did.
 18 Q. How much did you donate?
 19 A. 2, 300 bucks.
 20 Q. Did a lot of your -- do you know if a lot of
 21 your co-workers donated as well?
 22 A. I believe they did.
 23 MR. COHEN: All right. Thank you very
 24 much.
 25 MR. HAYDEN: I just have some questions

14 (Pages 53 to 56)

<p style="text-align: right;">Page 57</p> <p>1 for you, Harold.</p> <p>2 BY MR. HAYDEN:</p> <p>3 Q. Going to sort of bounce around the chronology a</p> <p>4 bit. Did you -- did you yourself being --</p> <p>5 working the footboard that day, did you weigh</p> <p>6 in at all on the second run, whether it should</p> <p>7 be done or not?</p> <p>8 A. I don't think so.</p> <p>9 Q. That was a decision that was, as you understood</p> <p>10 it, made by Mr. Marvin not to perform the</p> <p>11 second run?</p> <p>12 A. It was between Neil Franchuk and Mark Marvin.</p> <p>13 Q. But Mr. Marvin would have had the final say on</p> <p>14 that. Is that your understanding?</p> <p>15 A. It was between Mark Marvin and Neil Franchuk.</p> <p>16 If Neil refuses to go or if Marvin says no, I</p> <p>17 don't know.</p> <p>18 Q. But you didn't hear -- you weren't -- you</p> <p>19 didn't hear the conversation between Mr. Marvin</p> <p>20 and Mr. Franchuk relative to the</p> <p>21 decision-making of the second run?</p> <p>22 A. No.</p> <p>23 Q. Okay. When Jacob Tischer was in the shanty and</p> <p>24 as what you were doing -- when you testified</p> <p>25 earlier he came into the shanty, you were doing</p>	<p style="text-align: right;">Page 59</p> <p>1 he believed he was having a stroke?</p> <p>2 A. No.</p> <p>3 Q. And did you overhear Mr. Tischer say to anyone:</p> <p>4 Mr. Marvin, Mr. Thomas, Mr. Franchuk, Mr. Lux,</p> <p>5 whether -- or that they -- he would -- let me</p> <p>6 start over. It's real convoluted. Did you</p> <p>7 ever hear Mr. Tischer ask Mr. Marvin,</p> <p>8 Mr. Franchuk, Mr. Thomas, or Mr. Lux to call</p> <p>9 911 on his behalf?</p> <p>10 A. No.</p> <p>11 Q. In your statement, which we've marked as</p> <p>12 Exhibit 35, there's a statement in there that</p> <p>13 you made to Ms. Lukehart that when you</p> <p>14 called -- when you radioed Mr. Marvin to</p> <p>15 inquire of how Jake was doing that Mr. Marvin</p> <p>16 told you that he had already called 911 for</p> <p>17 him; is that correct?</p> <p>18 A. Did it say...</p> <p>19 Q. I can just point you to it.</p> <p>20 A. Yeah.</p> <p>21 Q. Look at Page -- Page 6 of that document, the</p> <p>22 statement starting on Line 13 where you say,</p> <p>23 quote, I think that that was when I radioed</p> <p>24 Mark Marvin and asked him if emergency</p> <p>25 personnel were, like, contacted or something to</p>
<p style="text-align: right;">Page 58</p> <p>1 your paperwork, and you made some observations</p> <p>2 of him, and you were talking to him, was he</p> <p>3 talking coherently; in other words, could you</p> <p>4 understand what he was saying?</p> <p>5 A. Yes.</p> <p>6 Q. There was nothing odd about his speech pattern?</p> <p>7 A. Not that I recall.</p> <p>8 Q. When you were in the shanty, did you observe --</p> <p>9 with Jake, did you observe him make any calls</p> <p>10 on his cell phone?</p> <p>11 A. No.</p> <p>12 Q. Were you aware that he did make any calls on</p> <p>13 his cell phone at any time during this</p> <p>14 situation?</p> <p>15 A. No.</p> <p>16 Q. Safe to say that you at the time did not know</p> <p>17 what was wrong with Mr. Tischer?</p> <p>18 A. Not a clue.</p> <p>19 Q. And you never suspected that he was having a</p> <p>20 stroke?</p> <p>21 A. Absolutely not.</p> <p>22 Q. And Mr. Tischer did not ask you to call 911 for</p> <p>23 him; is that right?</p> <p>24 A. No.</p> <p>25 Q. Did you overhear Mr. Tischer say to anyone that</p>	<p style="text-align: right;">Page 60</p> <p>1 that effect. The next question was, And he</p> <p>2 responded that they had been, and your answer</p> <p>3 was, Yes -- or, Yup, and that he believed that</p> <p>4 Jake was suffering a stroke. Do you see that?</p> <p>5 A. Yep.</p> <p>6 Q. And so that's accurate?</p> <p>7 A. Yep.</p> <p>8 Q. Was that the first time that you'd ever heard</p> <p>9 any one of any of the cast of characters who</p> <p>10 was there during this time period during the</p> <p>11 incident use the word "stroke"?</p> <p>12 A. I believe so.</p> <p>13 Q. It's been testified to by others in this case</p> <p>14 who came before you that this time period where</p> <p>15 Mr. Tischer and others were in and around the</p> <p>16 shanty was about 8:15 p.m. to 8:30 or so. Does</p> <p>17 that sound right to you in retrospect?</p> <p>18 A. Probably.</p> <p>19 Q. From the shanty if -- at the shanty there's a</p> <p>20 landline; is that correct?</p> <p>21 A. Yes, there is.</p> <p>22 Q. And you can make outside calls on that?</p> <p>23 A. It's locked, so I don't -- I think you have to</p> <p>24 have a code.</p> <p>25 Q. Okay. And you're aware of what RMCC is?</p>

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1 A. Yep.
 2 Q. And that can be called from the radio?
 3 A. By calling dispatch?
 4 Q. Yep.
 5 A. Yeah. I can call dispatch, yep.
 6 Q. Did you talk to Mr. Tischer -- I'm sorry if
 7 you've already testified to this. But did you
 8 talk to him at all, either by phone or in
 9 person, at any time after you last saw him
 10 leave the shanty?
 11 A. No.
 12 Q. Did you go to the hospital to see him?
 13 A. No.
 14 Q. Did you attempt to reach out to him?
 15 A. As it said in the thing, I tried to friend him
 16 on Facebook.
 17 Q. And did he respond?
 18 A. No.
 19 Q. Did you ever -- Mr. Banker asked you whether
 20 you made contemporaneous -- or notes at the
 21 same time that you were in the shanty while
 22 this was all going on. Did you at any time
 23 after the fact sit down and write down any
 24 timeline or any -- any recollections?
 25 A. No.

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1 Q. Have you spoken with anyone else from
 2 management, including Mr. Marvin, Mr. Swentik,
 3 after the incident about what happened --
 4 A. Well --
 5 Q. -- if you recall?
 6 A. I talked to -- I talked to Ms. Lukehart about
 7 it. And I don't really recall having any other
 8 detailed conversations about that particular
 9 incident. I don't remember talking -- sitting
 10 down and talking with anyone about it.
 11 Q. And other than scuttlebutt and rumors that
 12 you've heard around the yard in the days and
 13 weeks that followed, did you ever sit down with
 14 anyone and have an extended conversation that
 15 you can -- the details of which you can recall
 16 right now about what happened?
 17 A. No.
 18 Q. You think anybody did anything wrong that day?
 19 A. No.
 20 Q. Do you know Mr. Tischer's brother?
 21 A. Not personally.
 22 Q. I'm drawing a blank on his first -- Josh. Josh
 23 Tischer, does that help you recollect?
 24 A. He was a conductor there. I believe his name
 25 was on the roster, but I don't really remember

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1 him.
 2 Q. Have you ever -- did you ever talk to Josh
 3 Tischer, whether it was that evening,
 4 August 12th, 2017, or any day following, about
 5 the incident?
 6 A. No.
 7 Q. You indicated that you may have heard some
 8 radio chatter when Neil and Jake's train came
 9 back to the Altoona yard. Do you remember any
 10 of that radio communication specifically, as
 11 you sit here today?
 12 A. Not specifically, no.
 13 Q. Just a point of clarification. When you said
 14 that it was your recollection that you believe
 15 Mr. Tischer had gone to the porta-john because
 16 you heard the door slam, the spring-loaded
 17 doors --
 18 A. Um-hum.
 19 Q. -- you're familiar with, you didn't observe
 20 him, though, walking either to or from the
 21 porta-john; is that -- is that right?
 22 A. I'm not sure.
 23 Q. You don't recall?
 24 A. I don't recall that.
 25 Q. Last question. Your grandmother, when she had

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1 her stroke, did you observe her when she was in
 2 the midst of that?
 3 A. No.
 4 MR. HAYDEN: Those are all my questions.
 5 Thank you.
 6 MR. BANKER: I don't have anything
 7 further.
 8 MR. COHEN: I don't either.
 9 MR. HAYDEN: Thank you, sir. You're all
 10 done.
 11 (Proceedings concluded at approximately
 12 3:21 p.m.)
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16 (Pages 61 to 64)

1 STATE OF WISCONSIN)
)ss

2 COUNTY OF EAU CLAIRE)
3

4 I, Stephanie Peil, Notary Public in and for the
5 State of Wisconsin, certify there came before me the
6 deponent herein, namely Harold Lowe, who was by me
7 duly sworn to testify to the truth and
8 nothing but the truth concerning the matters in this
9 cause.

10 I further certify that the foregoing transcript
11 is a true and correct transcript of my original
12 stenographic notes.

13 I further certify that I am neither attorney or
14 counsel for, nor related to or employed by any of
15 the parties to the action in which this deposition
16 is taken; furthermore, that I am not a relative or
17 employee of any attorney or counsel employed by the
18 parties hereto or financially interested in the
19 action.

20 IN WITNESS WHEREOF, I have unto set my hand and
21 affixed my Notarial Seal this 8th day of December,
22 2019.

23
24 _____
25 Stephanie J. Peil, Notary Public